EXHIBIT 13

1   UNITED STATES DISTRICT COURT

2   NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5   CISCO SYSTEMS, INC.,   )
)
6   Plaintiff,   )
) Case No.
7   vs.   ) 5:14-cv-05344-BLF (PSG)
)
8   ARISTA NETWORKS, INC.,   )
)
9   Defendant.   )
)
10   _____)

11

12

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14

15

16   VIDEOTAPED DEPOSITION OF KEVIN JEFFAY, Ph.D.

17   San Francisco, California

18   Tuesday, June 21, 2016

19   Volume I

20   *** HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY ***

21

22   Reported by:
     CARLA SOARES
23   CSR No. 5908

24   Job No. 2334018

25   Pages 1 - 212

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 1        UNITED STATES DISTRICT COURT
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 5  CISCO SYSTEMS, INC.,    )
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 6      Plaintiff,   )
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                            )
 8  ARISTA NETWORKS, INC.,    )
                            )
 9      Defendant.   )
                            )
10  _____)
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16       VIDEOTAPED DEPOSITION OF KEVIN JEFFAY,
17  Ph.D., Volume I, taken on behalf of Defendant, at
18  633 Battery Street, San Francisco, California
19  beginning at 9:10 a.m., and ending at 4:43 p.m., on
20  Tuesday, June 21, 2016, before CARLA SOARES,
21  Certified Shorthand Reporter No. 5908.
22
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 1  APPEARANCES:
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22  ALSO PRESENT:  Jeff Chase
23          Sean Grant, Video Operator
24
25          --o0o--
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12      of U.S. Patent No. 7, 047,526
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22      Infringement of U.S. Patent
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18      Jeffrey S. Chase, Ph.D. Regarding
19      Non-Infringement of U.S. Patent
20      No. 7,047,526 and Related Matters
21
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2 (Pages 2 - 5)

Veritext Legal Solutions
866 299-5127

1   San Francisco, California

2   Tuesday, June 21, 2016

3   9:10 a.m.

4

5   (Exhibit 1369 and Exhibit 1370 were marked

6   for identification and are attached hereto.)

7   P R O C E E D I N G S

8   THE VIDEO OPERATOR: Good morning. We're

9 on the record. The time is 9:10 a.m., and the date

10 is June 21st, 2016. This begins the videotaped   09:09:27

11 deposition of Dr. Kevin Jeffay.

12   My name is Sean Grant, here with our court

13 reporter, Carla Soares. We're here from Veritext

14 Legal Solutions at the request of counsel for

15 defendant.   09:09:41

16   This deposition is being held at Keker &

17 Van Nest, LLP, in San Francisco, California. The

18 caption of this case is Cisco Systems, Inc., versus

19 Arista Networks, Inc., Case No. 5:14-cv-05344-BLF.

20   Please note that audio- and   09:10:01

21 video-recording will take place unless all parties

22 have agreed to go off the record. Microphones are

23 sensitive and may pick up whispers, private

24 conversations, or cellular interference.

25   At this time, will counsel please identify   09:10:12

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1 themselves and state whom they represent.   09:10:13

2   MR. KRISHNAN: Ajay Krishnan from Keker &

3 Van Nest for Arista.

4   MR. ROSEN: David Rosen from Keker &

5 Van Nest for Arista.   09:10:21

6   MR. KRISHNAN: And we also have here our

7 expert, Jeff Chase.

8   MR. JAFFE: Jordan Jaffe of Quinn Emanuel

9 on behalf of the plaintiff Cisco and the witness.

10   THE VIDEO OPERATOR: Will the certified   09:10:34

11 court reporter please swear in the witness.

12   KEVIN JEFFAY, Ph.D.,

13 having been administered an oath, was examined and

14 testified as follows:

15   EXAMINATION   09:10:36

16 BY MR. KRISHNAN:

17   Q Good morning, Dr. Jeffay.

18   A Good morning.

19   Q When did you first start working for Cisco

20 in relation to this matter?   09:10:50

21   A I think in earnest, January of this year.

22   Q And why do you say "in earnest"?

23   A Because I had been contacted about the

24 matter prior to January, but I don't believe I

25 really did any substantive work prior to January.   09:11:10

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---

1   Q And when were you first contacted?   09:11:12

2   A I believe it was in early 2015.

3   Q And you were retained at that time but

4 didn't really do any substantive work until

5 January 2016?   09:11:30

6   MR. JAFFE: Let me just object and caution

7 the witness not to reveal any communications between

8 yourself and any law firm in this case in answering

9 these questions.

10   THE WITNESS: Sure.   09:11:41

11   I don't recall, actually, when, precisely,

12 I was retained for this matter, but I believe it was

13 in 2015.

14 BY MR. KRISHNAN:

15   Q Okay. Have you done any work for Cisco   09:11:50

16 outside of this matter?

17   A Yes.

18   Q And what work is that?

19   A I was also involved in the ITC cases.

20   Q Okay. And when you say "ITC cases," was   09:12:05

21 there more than one matter?

22   A Yes.

23   Q Okay. And can you describe, generally,

24 those matters?

25   A Sure. I believe, somehow, I actually   09:12:16

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1 remember the investigation number. I think it was   09:12:19

2 944 and the 945, if I have the numbers right. One

3 was in, I think, September of '15, and the other was

4 in November of '15.

5   Q Okay. And these were both cases involving 09:12:35

6 Cisco patent assertions against Arista?

7   A That's correct.

8   Q And what was the general nature of the

9 work that you did on those matters? And feel free

10 to discuss each one separately if it changes your   09:12:47

11 answer.

12   A Sure. If by "nature" you mean my role, I

13 opined both on infringement and the validity of a

14 set of Cisco patents.

15   Q Okay. And how many patents total?   09:13:02

16   A I believe at the end of the day there were

17 three.

18   Q And by "at the end of the day there were

19 three," does that mean there were initially more and

20 it got winnowed down to three?   09:13:19

21   A Yes. I think at the time the hearing

22 came, or the time the reports came, there were only

23 three.

24   Q Okay. And did you bill for those matters

25 and that ITC work separately from your billings on   09:13:31

Page 9

3 (Pages 6 - 9)

1 every element have to meet that requirement?   11:35:58
2   A My understanding is that for the parse
3 tree that specifies valid generic commands, every
4 element has to meet that requirement.
5   Q Let's look again at Exhibit 1374, and   11:36:41
6 let's start with the ConcatRule for show openflow
7 flows.
8   Do you see that?
9   A I do
10   Q Okay. Does that element specify at least   11:36:58
11 one generic command component?
12   A Yes.
13   Q Why do you say that?
14   A Because in the representation of this
15 rule, the object for the ConcatRule will contain   11:37:21
16 objects for tokens that would be show, openflow, and
17 flows, and each one of those would be a generic
18 command component.
19   Q And just to be clear, you're not saying
20 that the subrules for the show TokenRule, the   11:37:40
21 show -- I'm sorry. Let me -- let me restate that.
22   You're not saying as part of your analysis
23 that the TokenRules for show, openflow, and flows
24 are accused elements, correct?
25   A So you've used the word "accused" here,   11:38:16

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1 and I think -- just to make sure I understand your   11:38:19
2 question, this is fairly far into the analysis here.
3 And I'm not viewing it as I'm accusing elements. I
4 mean, I'm just applying the claims.
5   So perhaps you don't mean anything deep by   11:38:37
6 the use of your word "accused."
7   Q Let me restate it then.
8   A Sure.
9   Q You're not stating for the purpose of your
10 infringement analysis that the show TokenRule, the   11:38:46
11 openflow TokenRule, or that the flows TokenRule are
12 elements?
13   A That's correct.
14   Q Now, does the show openflow flows
15 ConcatRule specify a command action value?   11:39:11
16   A Yes.
17   Q How many?
18   A At least one.
19   Q And what is that at least one?
20   A When this command was added, it would have   11:39:28
21 had to have specified a value function as part of
22 the ConcatRule -- as part of the specification of
23 the ConcatRule. And that value function is what I'm
24 calling the command action value.
25   Q And is that value function something that   11:39:49

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1 would lead to the openflow show, sysname, system   11:39:52
2 name, flows, prescribed command indicated in
3 Exhibit 1373 that corresponds to the show openflow
4 flows generic command?
5   A I'm sorry. I should have stopped you.   11:40:11
6 You were a little ahead of me before I found the
7 line. Could you --
8   Q That value function that you're talking
9 about --
10   A Right.   11:40:19
11   Q -- is the one that ultimately points the
12 system towards the prescribed command that goes
13 along with the show openflow flows command in
14 Exhibit 1373, correct?
15   MR. JAFFE: Objection. Vague.   11:40:32
16   THE WITNESS: Generally, yes.
17 BY MR. KRISHNAN:
18   Q Are there any other command action values
19 associated with the show openflow flows ConcatRule
20 other than the value function you just mentioned?   11:40:59
21   A I don't believe so, but to be sure, we'd
22 have to go and check.
23   Q Okay. Have you identified any command
24 action values associated with the show openflow
25 flows ConcatRule in your report?   11:41:25

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1   A If you -- so what my analysis has done is   11:41:37
2 showed how these commands, such as these, are added
3 to the system and how the value function is
4 specified.
5   I don't believe I've identified the exact   11:41:47
6 value function, but the code trace shows that it's
7 there.
8   Q Okay. What I was getting at is, your
9 report would not tell us whether there are more than
10 one command action values associated with the   11:42:03
11 ConcatRule. We'd have to go back to the code to
12 figure that out.
13   A Well, my report does in the sense that it
14 walks through the process, and it shows all the
15 places where value functions can be added.   11:42:15
16   Q Okay. I understand that it says that in
17 general. But in order to figure out whether there
18 is more than one command action value for the show
19 openflow flows ConcatRule, we wouldn't be able to
20 find the answer to that in your report. For that   11:42:35
21 specific question, we'd have to go to the code?
22   MR. JAFFE: Objection. Misstates prior
23 testimony.
24   THE WITNESS: You'd take the analysis that
25 was provided in the report and apply it to the show   11:42:43

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24 (Pages 90 - 93)

1 shown here.   11:50:03
2   Q Other than those command action values for
3 each of the ConcatRules, does it specify any other
4 command action values?
5   A I believe it would.   11:50:23
6   Q And would those be command action values
7 associated with other subrules not shown here?
8   A Yes.
9   Q Okay. But other than the command action
10 values associated with its subrules, the top-level   11:50:39
11 OrRule does not specify any other command action
12 values, does it?
13   A I don't believe so.
14   Q You referenced in your report some value
15 functions associated with rules where the value   11:51:28
16 function is set to none.
17   Do you recall that?
18   A I do.
19   Q Is it part of your infringement analysis
20 that value functions that are set to none are   11:51:40
21 command action values?
22   A No.
23   Q So for the purposes of the 77 commands
24 listed in Exhibit 1373, would it be fair to say that
25 the command action values associated with the 77   11:52:15

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1 commands in the "Generic Command" column lead to the   11:52:28
2 prescribed commands listed in the "Prescribed
3 Commands" column?
4   MR. JAFFE: Objection Vague
5   THE WITNESS: Can you just reread that   11:52:43
6 back, please?
7   (Record read as follows:
8   "Question: So for the purposes of the 77
9 commands listed in Exhibit 1373, would it be
10 fair to say that the command action values   11:52:45
11 associated with the 77 commands in the
12 'Generic Command' column lead to the
13 prescribed commands listed in the 'Prescribed
14 Commands' column?")
15   THE WITNESS: Thank you   11:53:07
16   Yes
17 BY MR. KRISHNAN:
18   Q And is it also part of your opinion that
19 there might be other command action values for the
20 generic commands listed in this exhibit as well?   11:53:23
21   A I think yes, there's at least one, and
22 there may be cases of others
23   Q What's the one that you're referring to?
24   A I'm sorry?
25   Q What's the one that you're referring to?   11:53:45

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1   A There may -- sorry. There may be -- there   11:53:48
2 is at least one command action value associated with
3 each of the generic commands that is listed here.
4   Q Okay.
5   A Here in Exhibit 1373.   11:53:59
6   Q So are you saying that for each of the
7 generic commands in Exhibit 1373, there may be an
8 additional prescribed command?
9   MR. JAFFE: Objection. Misstates prior
10 testimony.   11:54:14
11   THE WITNESS: For some of them there may
12 be.
13 BY MR. KRISHNAN:
14   Q And those would be ones that you just
15 didn't list in the exhibit when doing your source   11:54:24
16 code trace?
17   A Or I just don't recall off the top of my
18 head.
19   Q Did you try to list all of the prescribed
20 commands that you could find for each generic   11:54:34
21 command when you were doing your analysis?
22   A I guess I would say I focused on finding
23 one.
24   Q Okay. For instance, in the very first
25 example, it looks like there are two prescribed   11:55:02

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1 commands listed for clear ipv6 neighbors interface.   11:55:08
2   A Correct.
3   Q Does that correspond to two command action
4 values or just one?
5   A I'm not certain. I believe that   11:55:31
6 corresponds to one command action value, but I'd
7 have to check.
8   MR. JAFFE: I don't want to break your
9 train of thought, but if you have somewhere to go at
10 noon, it's 11:56.   11:56:03
11   MR. KRISHNAN: Now might be a good time to
12 stop.
13   THE VIDEO OPERATOR: Going off the record,
14 the time is 11:57 a.m.
15   (Recess, 11:57 a.m. - 12:49 a.m.)   11:56:10
16   THE VIDEO OPERATOR: Back on the record.
17 The time is 12:49 p.m.
18 BY MR. KRISHNAN:
19   Q Dr. Jeffay, I have a couple of follow-up
20 questions for you with regard to Exhibit 1374.   12:48:39
21   I think you testified earlier that for the
22 show openflow flows ConcatRule, that that element
23 specifies three generic command components; is that
24 correct?
25   A I think that's what I testified to.   12:49:08

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1   Q Okay. And you -- whether you testified to   12:49:10
2 that specifically or not, would you agree with the
3 statement?
4   A Yes.
5   Q Does each one of those generic command   12:49:24
6 components have an associated command action value?
7   MR. JAFFE: Objection. Vague.
8   THE WITNESS: My analysis is of the
9 elements in the parse tree with regard to a command
10 action value. And I think what I testified is the   12:49:59
11 element in the parse tree has a command action
12 value.
13 BY MR. KRISHNAN:
14   Q Fair enough.
15   And what I'm asking is, is there a   12:50:18
16 specific command action value associated within that
17 element of the parse tree with the generic command
18 component show?
19   A I don't know how to answer that. I mean,
20 there is a command action. I don't know what it   12:51:02
21 would take to show that it was associated with just
22 show.
23   Q Okay. Well, let me put it slightly
24 differently, and maybe the wording difference will
25 matter and maybe it won't.   12:51:19

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1   Does that element of the parse tree   12:51:22
2 identify or specify a specific command action value
3 for show?
4   MR. JAFFE: Objection. Vague.
5   THE WITNESS: I know what it does, and I'm   12:52:02
6 just trying to relate that to your question. When
7 you say "a specific," do you mean as in a unique?
8 BY MR. KRISHNAN:
9   Q Well, let's start with that.
10   Does it identify a unique command action   12:52:24
11 value for the generic command component show?
12   A I would say no.
13   Q And why would you say no?
14   A Because based on my recollection, the
15 command action value is associated with -- it's best   12:52:45
16 described as being associated with the element as a
17 whole, or alternatively, specified with -- it's more
18 associated with the command -- I'm forgetting the
19 language -- the generic command component flows.
20   Q So would it be fair to say that the   12:53:37
21 command action value associated with the show
22 openflow flows ConcatRule is best described as
23 either being specified for the whole ConcatRule or
24 for the TokenRule flows --
25   MR. JAFFE: Objection. Sorry.   12:54:07

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1 BY MR. KRISHNAN: 12:54:08
2   Q -- rather than being specified for the
3 TokenRule show?
4   MR. JAFFE: Objection. Misstates prior
5 testimony.   12:54:16
6   THE WITNESS: Yeah. We're at different
7 levels of abstraction here. I mean, the command
8 action value is associated with the element, and in
9 particular, with at least one generic command
10 component, which, in this case, I would say is best   12:54:35
11 described by flows.
12 BY MR. KRISHNAN:
13   Q So you're not opining that the command
14 action value associated with the show openflow flows
15 element is specifically associated with the show   12:54:56
16 token?
17   MR. JAFFE: Objection. Vague.
18   THE WITNESS: If I understand your
19 question, I think the answer is yes.
20 BY MR. KRISHNAN: 12:55:19
21   Q With regard to the show openflow flows
22 command, what would the user experience be if the
23 user began typing in the command but just stopped
24 after the word "show" and then pressed "enter" in
25 EOS?   12:56:12

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1   A I don't recall precisely.   12:56:19
2   Q Do you know whether it would be a --
3 they'd receive an error message?
4   A I think they might.
5   Q It's not your position that if a user were   12:56:31
6 to just type "show," the result would be the
7 execution of the prescribed command associated with
8 show openflow flows in Exhibit 1373, right?
9   A If they just typed the word "show" and hit
10 "enter"?   12:56:57
11   Q Correct.
12   A That's correct.
13   Q And if they just typed the word "show" and
14 hit "enter," do you know whether any prescribed
15 command would get executed?   12:57:08
16   A And they took no additional -- the user
17 took no additional action?
18   Q Correct.
19   A No, I don't believe a prescribed command
20 would be executed.   12:57:21
21   Q I'd like to go back to something you
22 talked about before.
23   You said with regard to Exhibit 4, which
24 is 1373 of this deposition, that these were examples
25 of commands that you were characterizing as generic   12:57:44

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27 (Pages 102 - 105)

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1   A No.   16:41:52
2   Q And when Arista has changed commands in
3 their CLI so that users had to learn different
4 commands, you don't have any information about how
5 long it took Arista to implement those changes, do   16:42:09
6 you?
7   A No.
8   Q But that type of information would be
9 relevant to determining an estimate for how long it
10 would take to implement these types of   16:42:17
11 design-arounds?
12   A Possibly. I mean, it would depend on what
13 exactly -- it would depend on exactly the nature of
14 those modifications that you've been describing
15 relative to what's being proposed here.   16:42:35
16   MR. KRISHNAN: I don't think I have any
17 other questions.
18   MR. JAFFE: Nothing further from me.
19   THE VIDEO OPERATOR: This concludes
20 today's videotaped deposition of Dr. Kevin Jeffay.   16:42:51
21 We're off the record at 4:43 p.m.
22   (TIME NOTED: 4:43 p.m.)
23   --o0o--
24
25

Page 210

1   I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:
4   That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.
12   Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [x] was [ ] was not requested.
16   I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.
19   IN WITNESS WHEREOF, I have this date
20 subscribed my name.
21
22 Dated: 6/23/2016
23
24
25

                Carla Soares
                CARLA SOARES
                CSR No. 5908

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7
8   I, KEVIN JEFFAY, Ph.D., do hereby declare
9 under penalty of perjury that I have read the
10 foregoing transcript; that I have made any
11 corrections as appear noted, in ink, initialed by
12 me, or attached hereto; that my testimony as
13 contained herein, as corrected, is true and correct.
14   EXECUTED this _____ day of _____,
15 2016, at _____, _____.
16   (City)   (State)
17
18
19   _____
20   KEVIN JEFFAY, Ph.D.
21
22
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24
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54 (Pages 210 - 212)